

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
NEWPORT, SC** **SUPERIOR COURT**

STATE OF RHODE ISLAND	:	
	:	
V.	:	P1/90-0883A
	:	
RONALD L'HEUREUX	:	

DECISION ON REMAND

Thunberg, J. This matter was remanded to the trial court in order that certain factual issues pertaining to discovery be determined.

The victim in this case, Natalino Faria, was shot and killed at point blank range by the defendant. The defendant, a married man, observed the victim leaving a pizza restaurant with his (the defendant's) girlfriend/babysitter and followed them, armed with a .357 magnum and speedloaders of ammunition. The defendant proceeded to play "chicken" with the couple, eventually forcing them to pull over, whence the deadly confrontation occurred.

Three days before the slaying, acts of vandalism were perpetrated on the defendant's property for which he held the victim responsible. The defendant reported these incidents, as well as incidents which occurred months before, to the Rehoboth Police Department. The day before the killing, the defendant became agitated upon learning that no one had been arrested after he had filed his reports. The defendant alleges that the State failed to produce at trial the November 10, 1987 police report which he characterizes as "exculpatory evidence."

It must be noted that the only "original" parties involved in the remand proceedings are Mr. L'Heureux and the Court. The present prosecuting and defense attorneys did not become involved in this case until years after the trial had been concluded.

An examination of the trial transcript reveals that the November 10, 1989 incident and the report to the police department were mentioned in defense counsel's opening statement. Clearly the defendant had knowledge of it - he himself filed it! Defense counsel also acknowledged in his opening statement that on November 12, 1989, the defendant had called the Rehoboth Police to inquire as to the status of the investigation. The defendant in his own testimony - at trial - described in detail the vandalism at his property on the eve of November 10, 1989. After he completed his narration, he was asked the following questions by defense counsel:

- Q: Did you report that to the police?
A: Yes, I did.
Q: Did you have any suspicions who might have done that?
A: Yes, I did.
Q: Who did you suspect?
A: Natalino Faria.
Q: In fact, you told that to the police, did you not?
A: Yes, I did.
Q: You made a report to the police?
A: Yes, I did. (TR 240-41.)

With reference to the same incident and report, the defendant was cross-examined as follows:

- Q: So, that vandalism occurred somewhere between five thirty and seven thirty?
A: Yes, it did. . . .

Q: Is there any reason that you told the Rehoboth Police on that Friday night that the vandalism occurred sometime between seven fifteen and eight twenty-three?
A: No. Maybe I was just mistaken. (TR 275) . . .

Q: Now, are you telling this jury that you shot Natalino Faria because he vandalized your home on Friday night?

A: No (TR. 278) . . .

Q: Well, why did you glance, you were terrified, why didn't you stop to look for him?

A: Because of all the police reports I filed in the past . . . (TR. 287, emphasis supplied.)

Before addressing the testimony at the remand hearing, the court is compelled to refer to its ruling after a lengthy evidentiary hearing conducted during the defendant's motion for a new trial. The court shall incorporate by reference its reasoning in that decision. See Appended Court Transcript, beginning on page 97, line 18 and ending on page 102, line 24.

In the instant remand hearing, trial prosecutor Joshua Wall testified that he was not in the possession of any Rehoboth Police reports at the commencement of the trial. It was through prosecution witnesses that Mr. Wall learned that the defendant had reported incidents of vandalism to the police, blaming Natalino Faria. After Mr. Wall became aware - for the first time - that these reports were filed (after the trial had begun) he contacted the Rehoboth Police Department and requested that an officer bring the reports to the courthouse. The court has a distinct recollection of an officer appearing at the courtroom to deliver the documents.

That officer, Sergeant Peter Withers, testified at the remand hearing, that he appeared at the trial in 1990 with the reports. He definitely brought to the trial the vandalism reports in controversy and shared them with the attorneys. Honorable William A. Dimitri, Jr., Mr. L'Heureux's trial attorney, testified that he "obviously" knew about vandalism his client attributed to the victim. Judge Dimitri had questioned the defendant about incidents of vandalism both at defendant's residence and business and decided to use those events as part of the defense strategy. The Judge testified that he "relied on the

Rehoboth police reports in forming a defense." Raising the suspicion that Natalino Faria had perpetrated the damage to defendant's property and had also stolen a .32 caliber gun from the defendant, "all went into the defense to minimize first degree murder." The Judge explained that he was in no way surprised by the "mid-trial" discovery concerning the reports of vandalism and the Natalino Faria connection. When asked if he had been aware of this material he responded: "Yes, of course, I knew."

Several of Mr. Leureux's family members also testified at the remand hearing. Mrs. Pauline L'Heureux testified that after the defendant was arrested he displayed photographs to her depicting damage to his yard, house and car, as well as tire tracks. She said that the defendant told her to "hang on" to the pictures as they were "important to the defense." The pictures remained in Mrs. L'Heureux's possession throughout the trial; the defendant never asked her to produce them.

The defendant's sister, Suzanne Baptista, testified that she first viewed the tire track photos at the Rehoboth Police Department in 1994. Two years later, at the request of the family, Mrs. Baptista returned to the department to retrieve a set of negatives. Chief Warish allowed her to take the negatives which she had developed and forwarded to the Connecticut State Police Crime Lab for examination by Hans Stoeckler. Mr. Stoeckler and another expert witness testified that the tire imprints defendant's property were consistent with the type of tires on the victim's vehicle.

Mr. Alfred L'Heureux, defendant's father, testified that the defendant had placed photographs in the glove compartment of his (Alfred's) car. The defendant placed them there as his father drove him to La Salette Shrine where the defendant had insisted upon surrendering. The defendant said to his father, "make sure these stay in the glove compartment." Mr. L'Heureux never saw the photos and would only be "speculating" if he were to guess as to their number or content.

The defendant argued that these photos of lawn damage to the defendant's property would have been useful to the defense and were seized by the police and withheld from defendant.

It is elemental that the material in controversy was material which this defendant caused to be created. It is he who filed the police reports and he who knew that the pictures were taken. All related events were peculiarly within his knowledge. The events occurred in another state days and months before the killing. It is ludicrous to suggest that these materials were withheld by Rhode Island prosecuting attorneys.

The evidence is overwhelming and the court finds as a fact that the rules of discovery were not only complied with but exceeded.

The source of knowledge concerning the police reports was the defendant himself. To "discover" is to find out about something previously unknown. Even though this Court would not saddle the state with the burden of seeking out reports filed by defendants without the State of Rhode Island, of which the State had no knowledge, let alone possession; the Court will apply such a standard to the instant case. As soon as the prosecutor became aware of the reports, he summoned a Rehoboth police officer to the trial. Indeed, the trial was recessed until the officer arrived and the material was furnished. Of course, this material was no surprise to the defendant because the reports were his very own statements.

Nevertheless, this court is under order to make a factual finding "on the question of whether the material relating to the Rehoboth police reports was provided to the defendant as per his requests." The overwhelming, credible evidence leads incontrovertibly to one answer: a resounding "yes."